

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID CHRISTOPHER LEE WALTON,

ORDER

Petitioner,

19-cv-45-bbc

v.

BRIAN FOSTER,

Respondent.

On April 1, 2019, I dismissed petitioner David Walton's pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 so that he could pursue his unexhausted ineffective assistance of counsel claims in state court. Dkt. #15. Now petitioner requests that I extend his one-year statute of limitations period for filing a federal habeas petition because even though he filed a motion pursuant to Wis. Stat. § 974.06 on March 18, 2019, the state court set a hearing on the motion for August 30, 2019. Petitioner is concerned that he will not receive a decision from the state court before his federal limitations period expires.

Petitioner's request will be denied as unnecessary. Under 28 U.S.C. § 2244(d)(2), the time during which a properly filed application for state postconviction relief is pending does not count towards any period of limitation. At the time petitioner filed his § 974.06 motion on March 18, 2019, he had a little over four months remaining on his federal habeas clock (or until August 6, 2019). Dkt. #13 at 4-5. The clock stopped when petitioner filed his § 974.06 motion and, as long as it was properly filed, the clock

will not restart until he has exhausted his claims in the state court, leaving him more than a few months to refile his federal habeas petition.

ORDER

IT IS ORDERED that petitioner David Christopher Lee Walton's request to extend his one-year statute of limitations period for filing a habeas petition, dkt. #17, is DENIED.

Entered this 29th day of May, 2019.

BY THE COURT:
/s/

BARBARA B. CRABB
District Judge